

MEMORANDUM

TO: Western Massachusetts Electric Company; D.T.E. 01-36 & D.T.E. 02-20
Service List
FROM: Kevin F. Penders, Hearing Officer
DATE: September 27, 2002
RE: (1) Procedural Schedule, (2) Ground Rules, (3) Service List,
CC: Mary Cottrell, Secretary

I. PROCEDURAL SCHEDULE

The procedural schedule established during the August 13, 2002 Procedural Conference is as follows:

Report on Status of Settlement Negotiations	September 13, 2002
Settlement Presented for Department Review, or alternatively, Statement from Attorney General of Intention to File Testimony	September 27, 2002
Close to All Discovery Regarding Petition	October 4, 2002
Attorney General files Testimony	October 11, 2002
Response to All Discovery Regarding Petition	October 18, 2002
Close of All Discovery	October 25, 2002
Return of All Discovery	November 8, 2002
Procedural Conference to Resolve Dates for Rebuttal, Sur-Rebuttal, and Evidentiary Hearings	November 18, 2002

II. GROUND RULES

The parties shall follow the ground rules outlined below for the remainder of this proceeding. This proceeding shall be conducted in accordance with the provisions of G.L. c. 30A and 220 C.M.R. §§ 1.00 et seq., the Procedural Rules of the Department. In addition, the following ground rules shall apply to the conduct of the proceeding in this matter:

1. Information Requests

Information requests are prehearing discovery in the nature of interrogatories and requests for documents (Mass. R. Civ. P. 33, 34). Responses to information requests will not be part of the record unless marked and admitted into evidence. Parties shall provide responses to information requests within five business days of receipt of the request, unless otherwise indicated.

For the purposes of discovery, a document shall be deemed to include writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which data can be obtained, or translated, if necessary, by the respondent through detection devices into reasonably usable form.

2. Record Requests

Responses to record requests are written substitutes to oral answers where fault of memory or complexity of subject precludes a responsive answer by the witness at the hearing. As such, they are part of the record and the evidence, unless challenged as unresponsive and expunged in whole or part. Record requests shall not be used as a substitute for discovery or as a substitute for re-direct examination.

The ordinary time for response will be the fifth Department working day following the day on which the request is made. Objections to record requests shall be made at the time the request is made, and in no event later than the end of the next Department working day.

3. Protected Material

Where information or material is sought that is considered proprietary or protected by one party, the parties should discuss the use of a non-disclosure agreement before coming to the Department for protection or compelled submission.

The Department will make a reasonable effort to extend protection where appropriate within the requirements of the law and in consideration of the policy interests regarding public access. A party requesting proprietary treatment must submit its request in writing and state the reasons therefore. The party seeking such treatment has the burden to demonstrate that the

materials should be afforded the treatment requested in light of the presumption that such information is a public record.

4. Motions

Consistent with 220 C.M.R. § 1.04(5), any motion, unless made during a hearing, shall be made in writing. This requirement includes any requests for extensions of time deadlines or continuances of hearing dates. Any party may file a written answer/opposition to such motion within five days of such filing, unless otherwise indicated. Papers not served with the motion or answer/opposition may be filed only with leave of the Hearing Officer.

The parties must first attempt resolution of any discovery dispute before coming to the Department for assistance. Prior to filing any motions for discovery orders, counsel for each of the parties shall confer in a good faith effort to narrow the areas of disagreement to the fullest possible extent. Counsel for the party who intends to file the motion shall be responsible for initiating the conference. All such motions shall contain a certificate stating that the conference was held, together with the date and time of the conference and the names of all participating parties. Motions unaccompanied by such certificate will be denied without prejudice to renewal when accompanied by the required certificate.

All requests for proprietary treatment or motions arising out of a party's response to or asserted failure to comply with an information or record request, shall be accompanied by a brief. With respect to each request for proprietary treatment or other information/record request at issue, the brief shall set forth separately and in the following order: (1) the text of the request, (2) the opponent's response, and (3) a specific legal and factual argument.

For all motions and other interlocutory matters, copies of any cited cases, decisions or other supporting authorities shall be provided to the Hearing Officer in a separate appendix to the motion.

5. Exchange of Materials

The parties shall make arrangements for the expeditious exchange of materials, particularly discovery material, through the use of hand delivery, facsimile transmission ("FAX"), or other speedy means of delivery. Unless otherwise not feasible, the use of mail delivery should be avoided in the exchange of discovery material. Where material is delivered by means of FAX, a follow-up copy of the material must be otherwise delivered (use of mail delivery may be appropriate).

6. Format of Document Filings

All discovery and record request documents filed with the Department and all documents offered as exhibits shall be accurately punched to fit a standard three-hole binder.

Responses to information and record requests shall contain the following information: (1) set and question number, (2) recitation of request, and (3) identity of person who will support the response.

All written pleadings or comments also must be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to dte.efiling@state.ma.us; or (2) on a 3.5" floppy diskette, IBM-compatible format. The text of the e-mail or the diskette label must specify: (1) an easily identifiable case caption; (2) docket number; (3) name of the person or company submitting the filing, and (4) a brief descriptive title of document (e.g., comments or petition to intervene). The electronic filing should also include the name, title and phone number of a person to contact in the event of questions about the filing. Text responses should be written in either Word Perfect (naming the document with a ".wpd" suffix) or in Microsoft Word, (naming the document with a ".doc" suffix). Data or spreadsheet responses should be compatible with Microsoft Excel. Documents submitted in electronic format will be posted on the Department's Website, <http://www.state.ma.us/dpu/>.

7. Number of Copies

The Department requires copies to be filed in the following numbers:

Prefiled Testimony - 1 original and 6 copies

Information Requests and Responses - 1 original and 6 copies

Responses to Record Requests - 1 original and 6 copies

Bulk Responses (100 pages or more) - 1 original and 4 copies

Pleadings, Motions, Memoranda - 1 original and 6 copies

Briefs - 1 original and 6 copies

8. Address of Filings

The original of all filings must be filed with Mary Cottrell, Secretary of the Department. Where copies of a filing are required under these ground rules, all copies must be submitted to Kevin F. Penders, Hearing Officer.

9. Communications Between the Parties

Where information requests are sent to a party by means of FAX (see ground rule number 5), the FAX must be accompanied by telephone notification of the transmission. Failure to make prompt telephone notification may affect the timing of the response to the information request.

10. Hearing Arrangements

Hearings will be conducted at the offices of the Department at One South Station, Second Floor, Boston, Massachusetts, unless otherwise indicated. These hearings will begin each day at 10:00 a.m., according to the established schedule. Adjustments to the stated hearing arrangements may be made at the discretion of the Hearing Officer.

These ground rules are deemed consistent with the orderly conduct of this proceeding. Exceptions to any ground rule may be made by the Hearing Officer for good cause shown.

III. SERVICE LIST

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